

The Department's regulation at 86 Ill. Adm. Code 130.1501 describes the procedures used to obtain a credit for sales tax that is erroneously paid. (This is a GIL.)

October 24, 2007

Dear Xxxxx:

This letter is in response to your letter dated February 9, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to respectfully request a General Information Letter (GIL) from the Department of Revenue to clarify the application of the referenced tax law to the operations of our client based on the facts that are presented herewith. We understand that a GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department.

### **Facts**

Our client ('the Company') provides clinical laboratory testing services to hospitals and clinics. The cost ratio of providing these services has been determined to be less than 35%. Based on a telephone conversation with a Department representative the Company understands that it is classified as a 'de minimis' serviceman subject to the requirements of Section 86 Illinois Adm. Code 140. Consequently, the Company is not registered as a retailer under Section 2a of the Retailer's Occupation Tax Act. Instead the Company has incurred a use tax liability on the cost price of the tangible personal property transferred to their customers incident to the sale of services.

Approximately 40% of the total yearly services rendered by the Company are provided to non-profit organizations who have obtained exemption identification numbers ('E' numbers) from the Department pursuant to the provisions of Section 86 Ill. Admin. Code 130.2005. It is our understanding that the exempt status of these organizations flows

through to the Company provided that the 'E' number has been obtained from the customers.

Due to an oversight during the past several years, the Company inadvertently incurred use tax on 100% of the cost price of tangible personal property even though 'E' numbers from tax-exempt customers have been obtained and are on file. We are assisting our client in requesting a refund or credit of the portion of use tax paid on tangible personal property transferred to tax-exempt customers providing 'E' numbers. This is being accomplished by filing amended returns and utilizing Department Form ST-6 Claim or Prior Overpayment / Request for Action on a Credit Memorandum.

Additionally, the Company has never extended an 'E' number to its vendors on the purchases of tangible personal property transferred to tax-exempt customers and has instead paid tax on 100% of the cost price of these purchases. Section 86 Illinois Adm. Code 140.108a states in part that '[t]he serviceman utilizing [the exempt entity flow through] may...if tax was paid to the supplier, present it to his supplier along with a request that the supplier submit a claim for credit to the Department.' In accordance with this code, we have contacted the Company's vendors and provided the 'E' number requesting a refund or credit for taxes paid in error during the past three years. More than 80% of the vendors are refusing to abide by our request saying that submitting a claim to the Department for three years is 'too much trouble' or they can not comprehend the complexity of this law and state they believe tax was charged correctly and that no refund or credit is due to the Company. The fact that a refund or credit is due only on 40% of the purchases made from these vendors tends to only complicate the matter.

### **Issue**

Although the Illinois Administrative Code expressly provides for a refund or credit to be obtained from vendors upon presentation of the customer's 'E' number, what other recourse is available to the Company to rectify this situation when the vendor refuses to cooperate? For instance, can the vendor sign an assignment of rights affidavit allowing the Company to recover these taxes by itself filing amended returns and utilizing the Form ST-6 as described above? Alternatively, could the Company request an audit from the Department of Revenue in which these overpayments of taxes paid to vendors in error could be addressed and rectified?

Thank you for your assistance in this matter. Please call me if you need any additional information.

### **DEPARTMENT'S RESPONSE**

Sellers required to collect Illinois tax must either charge tax or document an exemption when they make deliveries in Illinois.

Sales to exempt organizations must be documented in order to be exempt. Retailers that sell tangible personal property to exempt organizations must obtain the exemption identification ("E") number issued to the exempt organization by the Department in order to document that sales to the organization are exempt. See 86 Ill. Adm. Code 130.2080, copy enclosed.

The Department's regulation at 86 Ill. Adm. Code 130.1501 describes the procedures used to obtain a credit for sales tax that is erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, usually only retailers can file a claim for credit. The Department has allowed third parties, under powers of attorney, to file amended returns on behalf of taxpayers.

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. The taxpayers must apply for the credit in the manner described in the rule. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

If sellers agree to file a claim for credit, purchasers must provide documentation that the purchases of the tangible personal property were exempt as the purchasers were exempt organizations with "E" numbers.

Please note that the form ST-6, Claim for Prior Overpayment/Request for Action on a Credit Memorandum, is not the form to use in the situations you have described. If your client has paid the amount that was shown due on an original Form ST-1, Sales and Use Tax Return, it must file a corresponding ST-1-X, Amended Sales and Use Tax Return for that same period if it later determines that all or part of the tax shown on the original return was paid in error. Please note that this is the same process that would be utilized if a third party filed amended returns on behalf of taxpayer under a power of attorney.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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